

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CF-141

CHAI S. VANG,

Defendant.

STATE'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S
MOTION TO SEAL MOTION

On March 1, 2005, the defendant, Chai S. Vang, filed several motions with the court including a motion seeking to seal another motion filed with the court. Vang files this motion because he believes it is "necessary to ensure the integrity of the defense pretrial investigation and preparation and in order to ensure a fair determination of the same." Vang cites no authority for his request.

Wisconsin Stat. § 59.20(3)(a) (2003-2004) provides that the clerk of the circuit court shall maintain and permit the public to inspect records that the office is required to keep. "With proper care, the officers shall open to the examination of any person all books and papers required to be kept in his or her office and permit any person so examining to take notes and copies of such books, records, papers or minutes there from except as authorized in par. (c) and ss. 19.36(10) to (12) and 19.59(3)(d) or under ch. 69."

The right to inspect is not absolute. Wisconsin courts have had occasion to interpret this

provision in the context of pleadings filed in connection with civil litigation and have recognized that a public record may be sealed under the following circumstances: (1) if a statute authorizes the sealing of otherwise public records, (2) if disclosure infringes a constitutional right or (3) if the administration of justice requires it. *State ex rel. Bilder v. Delavan Tp.*, 112 Wis. 2d 539, 554-56, 334 N.W.2d 252 (1983).

Vang has not identified a Wisconsin statute authorizing the confidentiality of the type of motion he filed. Few Wisconsin statutes permit or require the filing of pleadings under seal in criminal cases. *See, e.g., State v. Gilmore*, 201 Wis. 2d 820, 823, 549 N.W.2d 401 (1996) (Wisconsin Electronic Communications Surveillance Law permits state to incorporate intercepted communications into a complaint as long as they are filed under seal.). A court may maintain documents under seal to protect constitutional rights. *Bilder*, 112 Wis. 2d at 555. Finally, a court may have the inherent power to seal documents in order to preserve and protect the exercise of its judicial function of presiding over the conduct of judicial proceedings when the administration of justice requires it. *Bilder*, 112 Wis. 2d at 556, and *State ex rel. Ampco Metal, Inc. v. O'Neill*, 273 Wis. 530, 78 N.W.2d 921 (1956) (in trade secret litigation, sealing may be necessary to protect rights of party claiming injury for trade secret violation).

Based upon the state's factual and legal argument as presented in the sealed motion, continued sealing of Vang's motion and the state's response is no longer

necessary. As such, the state respectfully requests the court to enter an order unsealing documents related to Vang's motion.

Dated this 10th day of May, 2005.



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